IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/03/2004

CORAM

THE HON'BLE Mr. JUSTICE P.D.DINAKARAN

Writ Petition No.6091 of 2002

K.Chellathangam .. Petitioner

-Vs-

1. The Chairman,
Life Insurance Corporation
of India,
Central Office,
Yogakshaema,
Post Box No.19953,
Jeevan Bimarg,
Mumbai-400021.

2. The Zonal Manager,
Life Insurance Corporation
of India,
L.I.C. Building,
Anna Salai,
Chennai-600002.

3. The Divisional Manager,
Life Insurance Corporation
of India,
Divisional Office,
Jeevan Prakash,
Punithavathiyar Street,
Palayamkottai,
Tirunelveli-627 002. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.S.Subbiah

For Respondents : Mr.R.Subbiah

:O R D E R

The short, but crucial issue that arises for my consideration in the

above writ petition is, whether the proceedings of the second appellate authority-the first respondent herein dated 1.11.2000, confirming the order of the first appellate authority-second respondent dated 1 0.12.1999 and that of the original authority the third respondent herein dated 23.4.1998, terminating the agency granted to the petitioner by the respondents-Corporation, is in accordance with the procedure contemplated under Regulation 23 of the Life Insurance Corporation of India (Agents) Regulations, 1972, which reads as follows:

"23. Consideration of appeals:-

(1) Where an appeal is received under these regulations, the appellate authority shall consider all the circumstances of the case and pass such others as it deems fit:

Provided that the appellant shall be given a reasonable opportunity of representing his case."

2. To decide the above issue, I do not propose to go into the merits of the case, as the appellate authority's order itself is selfexplanatory, which reads as follows:-

Life Insurance Corporation
of India,
Central Office:"Yogakshema"
Post Box No.19953,
Jeevan Bima Marg,
Mumbai 400 021.

Proceedings under Rule 24 of the Life Insurance Corporation of India (Agents) Rules, 1972.
and

In the matter of Shri.K.Chellathangam, ex-agent, Code No.362300, Kuzhithurai Branch, Tirunelveli District.

ORDER

Shri.K.Chellathangam, Agency Code No.362300 (hereinafter referred to as "The Memorialist") attached to LIC of India, Kuzhithurai Branch under Tirunelveli Division was issued a show cause notice on 16.3.1998 by the Divisional Manager, LIC of India, Tirunelveli Division, for suppression of material facts. The reply of the Memorialist not being found satisfactory, the Divisional Manager, Tirunelveli, passed an order dated 23.4.1998 terminating the agency of the Memorialist with forfeiture of renewal commission as per the relevant provisions of the LIC of India (Agents) Rules, 1972, (hereinafter referred to as "the Agents Rules").

The appeal dated 1.3.1999 by the Memorialist was duly considered by the Appellate Authority, the Zonal Manager, LIC of India, Southern Zonal Office, Chennai, who after considering the facts and circumstances of the case, confirmed the decision of the Divisional Manager, Tirunelveli, and rejected the appeal vide order dated 10.12.1999.

Aggrieved by the order of the Zonal Manager, Chennai, Shri. Chellathangam has now submitted a Memorial dated 12.1.2000 to the undersigned under Rule 24 of the Agents Rules. Being the Competent Authority under Rule

24 of the Agents Rules, I have considered the Memorial and have carefully examined the relevant records of the case and proceed to dispose of the same as follows:-
The Memorialist has contended that he has not given adequate opportunity to explain and disprove the charges levelled against him and the orders passed by the Divisional Manager and Zonal Manager are erroneous. I do not agree with the contentions of the Memorialist as I observe from the relevant records of the case that the Divisional Manager, Tirunelveli, has issued a show cause notice to the Memorialist giving him an opportunity to give his point of view before imposing the proposed penalty and as such there has been no deficiency in the procedure followed by the Competent Authority.
The Memorialist has sought to absolve himself on his guilt by pointing out the role played by the widow of the deceased life assured, Shri.Valsalam. I observe from the relevant records of the case that the Memorialist had witnessed the Declaration of Good Health for revival of the lapsed policy. The life assured died of cirrhosis of liver with cardiac failure and he was taking treatment during the period when the policy was revived. The Memorialist by not disclosing the relevant facts has acted in a manner detrimental to the interests of the Corporation. The action taken by the Divisional Manager, Tirunelveli and confirmed by the Zonal Manager, Chennai, through rejection of his appeal and that the memorial deserves to be rejected which I hereby do.
Dated at Mumbai, this 1st day of November, 2000.
sd/.Chairman.

3. Concededly, after receiving the letter dated 21.6.1999, as an appeal against the order of termination of agency of the petitioner passed by the original authority, viz., the third respondent herein dated 23.4.1998, the petitioner was not given any opportunity to represent his case before the appellate authority-the second respondent herein.

4. What all Mr.R.Subbiah, learned counsel appearing for the respondents-Corporation, contends is that no such further opportunity to represent the case is required, while disposing the appeal by the appellate authority, in view of the admission made by the petitioner in the letter dated 1.3.1999, that there was a clear interval between the lapse of policy on 28.12.1994 till the date of revival viz., 24.1.1997, which requires a careful verification of the medical certificate, as contemplated under Clause 6.B(6)(7) and (8) of the Manual For Agents read with Appendix III.

5. In my considered opinion, since the proviso to Regulation 23 of the said Regulations contemplates that the appellant shall be given a reasonable opportunity to represent his case, it is mandate for the appellate authority to give an opportunity to the appellant to represent his case and to explain under what circumstances he revived the policy, whether after following the procedure contemplated under the said Manual or otherwise. To this extent, there is a procedural lapse while passing the impugned order by the appellate authority-first respondent dated 1.11.2000. Hence, the impugned order dated 1.11.2000 passed by the first respondent-appellate authority is set aside and the matter is remitted to the first respondent with a direction to give a reasonable opportunity to the petitioner to represent his case and

to pass appropriate orders on merits, in any event, within three months from the date of receipt of copy of this order, to which the petitioner is directed to cooperate, making it clear that both the petitioner and the contesting respondents are entitled to agitate all the points before the first respondent-appellate authority.
The writ petition is allowed with the above direction. No costs.

Index :Yes
Internet :Yes

ATR